



## **STATEMEN OF THE CASE**

Dennis Eugene Scott appeals his sentence following his conviction for Operating While Intoxicated Endangering a Person, as a Class D felony, pursuant to a plea agreement. Scott presents a single issue for review, which we restate as whether he may collaterally attack his sentence following the revocation of his probation.

We dismiss the appeal.

## **FACTS AND PROCEDURAL HISTORY**

On January 9, 2006, the State charged Scott with operating a vehicle endangering a person, as a Class A misdemeanor, and operating a vehicle endangering a person, as a Class D felony. Under a plea agreement, Scott pleaded guilty to operating a vehicle endangering a person, as a Class D felony, and the State dismissed the misdemeanor charge. In the agreement, the State recommended the following sentence: “Three (3) years in the Department of Correction, with 180 days ordered executed on the Hamilton County Electronic Monitoring Program and the execution of 2 years and 185 days ordered suspended. Defendant shall be placed on probation for 2 years under such terms as the Court may impose . . . .” Appellant’s App. at 29. The agreement also provides that the “plea is in conjunction with the violation of probation under cause #29D05-0406-CM-4185. Defendant will admit to pending violations and parties agree that any executed time for the probation violation will be served on Hamilton County Work Release Program.” *Id.* at 30.

On September 12, 2006, the trial court accepted the plea agreement and sentenced Scott accordingly to three years in the Department of Correction, with 180 days ordered

executed on the Hamilton County Work Release Program and two years and 185 days suspended. The sentencing order also provides that the plea is “in conjunction with the violation of probation under cause #29D05-0406-CM-4185” and that the sentence was “to be served consecutive[ to] the sentence under 29D05-0406-CM-4185, with the sentence imposed under that cause to be served first followed by home detention and probation in this cause.” Id. at 27.

On May 10, 2007, the State filed a Notice of Non-Compliance with Community Corrections in this cause, and on May 18, the State filed an information of probation violation. On August 28, 2007, after a hearing, the court entered its Order On Community Corrections Non-Compliance and Violation of Probation. There the court revoked Scott’s probation and ordered him to serve two years in the Indiana Department of Correction. Scott now appeals.

### **DISCUSSION AND DECISION**

Scott contends that the trial court erred when it sentenced him. Specifically, he argues that, upon the revocation of his probation, the trial court should not have ordered the sentence to be served consecutive to the sentence in Cause Number 29D05-0406-CM-4185 because the plea agreement contemplated concurrent sentencing. Thus, although framed as an appeal from the order revoking his probation, in reality Scott challenges the sentence originally imposed on the ground that it does not comport with the terms of the plea agreement.

But Scott did not appeal his sentence within thirty days after sentencing, nor did he request permission to file a belated notice of appeal. See Ind. Appellate Rule 9(A)(1);

Ind. Post-Conviction Rule 2(1). Instead, in this appeal, he asserts an impermissible collateral attack on his underlying sentence. We do not have jurisdiction to entertain this issue. See Schlichter v. State, 779 N.E.2d 1155, 1157 (Ind. 2002); Addington v. State, 869 N.E.2d 1222, 1224 (Ind. Ct. App. 2007).

Dismissed.

SHARPNACK, Sr.J., and DARDEN, J., concur.